

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 107 of 2011

Tuesday, this the 27th day of September, 2011

CORAM:

Hon'ble Dr.K.B.S Rajan, Judicial Member
Hon'ble Ms.K Noorjehan, Administrative Member

T.P Leena, aged 46 years,
W/o M.S Gopinath
Junior Hindi Translator,
Cochin Base of Fishery
Survey of India, Cochin,
residing at "Unideck Enclave",
St. Sebastian Road,
Kumaranasan Nagar, Ernakulam

Applicants

(By Advocate – Mr. M.A Shafik)

V e r s u s

1. Union of India, represented by Secretary
Department of Animal Husbandry, Dairying
and Fisheries, Ministry of Agriculture,
New Delhi
2. The Director General
Fishery Survey of India
Botawala Chambers, SIR P.M Road, Mumbai
3. The Zonal Director
Cochin Base of Fishery Survey of India,
Cochin

Respondents

(By Advocate – Mr. George Joseph, ACGSC)

This application having been heard on 13.09.2011, the Tribunal
on 23.9.2011 day delivered the following:



ORDER

By Hon'ble Dr.K.B.S Rajan, Judicial Member -

1. The applicant is aggrieved by the alleged wrong fixation of pay on the grant of first/second financial upgradation to her under the Modified Assured Career Progression scheme which came into existence w.e.f. 01-09-2008.
2. The following dates and pay particulars of the applicant are essential for the purpose of deciding the issue:-
 - (a) 30-09-1990: The applicant joined the service of the Respondents as Hindi Translator (Group C Non-Gazetted) on regular basis. At that time her pay scale was Rs. 1400 – 2300. This is an isolated post – a 'stand alone' post with no post of feeder or promotional grade.
 - (b) 01-01-1996: Introduction of revised pay rules, 1996 in the wake of acceptance of the Fifth Pay Commission Recommendations and the replacement scale to the above scale of Rs 1400 – 2300 was Rs 4,500 – 7000/-
 - © 08-11-2000: The above said Revised pay scale of Rs 4,500 – 7,000 for Hindi Translator was replaced with retrospective effect from 01-01-1996 at Rs 5,000 – 8000/-
 - (d) 13-07-2004: The post of Hindi Translator was re-designated as Junior Hindi Translator (without any change in pay scale or functional responsibilities)
 - (e) 09-08-1999: Introduction of Assured Career Progression whereby financial upgradations are made available to those who could not get their promotion within a specific period (12 and 24 years) though these were eligible for promotion. The financial upgradation for isolated post is in accordance with the grade of pay i.e. S-1, S-2 etc., as given in an annexure to the order dated 09-08-1999.
 - (f) 29-03-2002: The applicant completed 12 years of service in the post of Junior Hindi Translator (erstwhile Hindi Translator) without any promotion and as such was entitled to be considered for grant of the first financial upgradation under the then existing ACP Scheme. Accordingly, she was placed in the pay scale of Rs 5,500 – 9000 w.e.f. 30-03-2002.



- (g) 01-01-2006 : Revised Pay Rules 2008 came into existence with retrospective effect from 01-01-2006.
- (h) 01-01-2006: By a Memorandum dated 24-11-2008, Pay of Rs 5,500 – 9000 replaced by Rs 7450 – 11500/- with retrospective effect from 01-01-2006.
- (i) 01-01-2006: Pay scale for Rs 7,450 – 11,500 under the Revised Pay Rules (2008) replaced by the Pay Band of Rs 9,300 – 34,800 with Grade Pay of Rs 4,600/-.
- (j) 01-01-2006 : By an order dated 04-05-2009, the pay of the Applicant was fixed in the pay Band of Rs 9300 – 34800 by virtue of her having been drawing the pay in the erstwhile scale of Rs 7,450 – 11500 as first financial upgradation.
- (l) 01-01-2006 : As per the Revised Pay Rules, 2008, the erstwhile pay scales of Rs 5,000 – 8,000, 5,500 – 9,000, 6,500 – 10500 have been merged and replaced by the Revised Pay Band P 2 of Rs 9,300 – 34,800/- with Grade Pay of Rs 4,200/-.
- (m) 19-05-2009: The erstwhile ACP scheme introduced on 09-08-1999 has been replaced by Modified Assured Career Progression (MACP) effective from 01-09-2008. This contains a provision that *promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under the Modified ACPS.*
- (n) 13-11-2009: By Office Memorandum, the pay scale of Rs 6,500 – 10,500 with Grade Pay of Rs 4,200/- had been revised to Rs 7,450 – 11500 w.e.f. 01-01-2006 and the grade pay enhanced to Rs 4,600/-
- (n) 30-03-2010: The Applicant completes 20 years of Service and is thus entitled to be considered for 2nd Financial Upgradation under the MACP.

3. A proposal from the respondents was made for grant of second financial upgradation to the applicant, increasing her grade pay from Rs 4,600 – 5,400/- vide Annexure A-8. However, the respondents have, ultimately, granted the second financial upgradation to the applicant w.e.f. 30-03-2010 placing her in the same PB of Rs 9,300 – 34,800/- but increasing the Grade pay from Rs 4,600 to Rs 4,800/- vide impugned Annexure A-1 and A-2 orders. In other words, the specific provision of ignoring the earlier financial upgradation granted under the erstwhile

ACP scheme had not been considered in the case of the applicant.

4. The claim of the applicant is that she should, by virtue of para 5 of the MACP scheme should be deemed to have not earned any promotion/upgradation and thus, she should be considered for the first financial upgradation with the grade Pay of Rs. 4,800/- as on 01-09-2008 and for the 2nd Financial upgradation, with the grade pay of Rs 5,400/- w.e.f. 30-03-2010. . The ground for her claim is as given in Ground C which contains the internal Audit Department note and the same is reproduced as under:-

“ In fact it is respectfully submitted before this Hon'ble Tribunal that the internal audit Department of the Respondents has already pointed out this aspect of mistake to the respondents. As per para 7 of their report, it is understood that they have pointed out this mistake and directed the 2nd respondent to correct the same. It is understood that the audit team has stated;

“ As per Government, of India, Department of Per. & Trg, OM No.35034/3/2008-Estt.(D) dated 19th May 2009, the Central Government considered the recommendation of the VI Pay Commission for introduction of MACPS to grant three financial upgradation under the MACPs at intervals of 10, 20 and 30 years of continuous regular service.

Financial upgradation under the Scheme will be admissible whenever a person has spend 10 years continuously in the same grade pay. Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial Scheme Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the VI Pay Commission shall be ignored for the purpose of granting upgradation under MACPs. The condition in detail for grant of financial upgradation under the Scheme are given in the OM referred to above.

On verification of Service Book and files of MACPs, it is observed that Smt.T.P Leena, Jr.Hindi Translator was granted 2nd financial up gradation under the MACPs vide Office Order No.F.8-32/2009 dated 19.04.2010 with effect from 30.03.2010 which is not in order. She may be considered for 1st and 2nd MACPs in the following manner.

Post	Junior Hindi Translator
Date of initial appointment	30.03.1990
Date of completion of 10 years	29.03.2000
Date of completion of 20 years	29.03.2010
Initial scale of pay	Rs.1400-40-1800-EB-50-2300



upgraded to Rs.5000-150-8000-
Ministry of Agriculture letter
No.2-5/2001-Fy Admn. Dated
31.07.2001

Financial upgradation under ACP
w.e.f 30.03.2002

Rs.5500-175-9000(Office order
No.1-1/2002-Estt.dated
11.02.2003-FSI, Mumbai)

VI – CPC Recommended to
upgrade the pay scale of
Jr.Translator to Rs.6500-200-
10500 – GP Rs.4600/- w.e.f
01.01.2006.

The promotions/financial
upgradation granted under ACP
to the pre-revised scale of
Rs.5500-9000 may be ignored
on account of merger of the pre-
revised scales of Rs.5000-8000,
Rs.5500-9000 and Rs.6500-
10500 recommended by the VI
PC -(Please refer MACPs –
Annexure – 1(5)(1)) Accordingly,
the official is entitled to get 1st
and 2nd MACPs.

1st 01.09.2008 – GP – Rs.4800
2nd 30-03-2010 – GP- Rs.5400

The official's pay may be refixed w.e.f 01.09.2008 after considering two
MACPs. However, before making payment of arrears to the official/s,
pay fixation statement may be verified by the PAO and the same may
be pasted in the Service Book. Similar cases may be reviewed and
revised accordingly.

It would appear that inspite of their own audit team objecting to the present
proposal the respondents are still reluctant to grant the said benefits to the
applicant. The action of the respondents reeks with malafide and is to be
interfered by this Hon'ble Tribunal in the interest of justice. "

5. Respondents have contested the O.A. According to them, the applicant
is entitled to the grade pay of Rs 4,800/- only as per the provisions of the MACP
Scheme. Their contentions are given in para 5 of their reply wherein it has been
stated, "*The post of Junior Hindi Translator in the Respondent No. 2 Department
was in the pay scale of Rs 5,000 – 150 – 8,000 till 31-12-2005 and not in the pay*



scale of Rs 6,500 – 10,500. This pay scale of Rs 6,500 – 10,500 was granted to the post of Junior Hindi Translator w.e.f. 01-01-2006, vide Annexure A-4 order with corresponding P B-2 + GP of Rs 4200/. Therefore, this post cannot be treated as having existed in the pay scale of Rs 6,500 – 10,500 prior to 01-01-2006. The second situation in the A-5 OM is about the grant of the Grade Pay of Rs 4200/- to the pre-revised pay scale of Rs 6500 – 10500 and not to the pay scale of Rs 5000 – 8000/-."

6. The applicant has filed her rejoinder reiterating her stand and adding a number of O.Ms and orders to hammer home her claim. This was rebutted in the additional reply, wherein, the respondents contended that the higher pay scale for Hindi Staff has been meant for only the Central Secretariat Staff and not for the subordinate staff. After the case was heard and orders reserved, counsel for the applicant filed an M.A. adding a copy of the extract of the audit report, in which the internal audit have advised the respondents to fix the pay of the applicant under the 2nd and 3rd MACP with the grade pay of Rs 4,800 and 5,400 respectively. In their second additional reply, the respondents have stated that the remarks or recommendations of the internal audit, which is yet to be finalized by the respondents cannot give any support to the claim of the applicant.

7. Counsel for the applicant argued that para 5 of the MACP scheme mandates that the earlier ACP drawn or promotion gained should be ignored in case the pay scale attached to the promotional post or the financial upgradation gets merged with the pay scale of the lower post and a common Pay Band with the same Grade pay has been introduced. Again, in so far as the revised pay scales for the Hindi Staff, though the respondents claim that the same is meant only for

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Secretariat Staff, the Hyderabad Bench has clearly held, "We entirely agree with the view that Junior & Senior Hindi Translators working in subordinate offices are entitled for the pay scales on par with Junior and Senior Hindi Translators working in CSOLS."

8. Counsel for the respondents invited our attention to the order dated 02-04-2004 which talks of Hindi Staff of Central Secretariat Official Language Service and thus the same cannot be extended to the subordinate offices.

9. Arguments were heard and documents perused. The question is whether the applicant is entitled to the grant of first financial upgradation w.e.f. 01-09-2008 and second w.e.d. 30-03-2010 as claimed and if the answer is in affirmative, what should be the pay band and grade pay of the applicant as on 01-09-2008 on grant of first financial upgradation and as on 30-03-2010 on grant of second financial upgradation.

10. We must at this juncture get a hang of the import of the provisions of Clause 5 of the MACP Scheme, which has been given with illustration as under:-

5. Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPs.

The pre-revised hierarchy (in ascending order) in a particular organisation was as under:-

Rs.5000-8000, Rs.5500-9000 & Rs.6500 – 10500.

(a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs.5000-8000 and who did not get a promotion even after 25 years of service prior to 01.01.2006, in his case as on



1.1.2006 he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organisation, i.e., to the pre-revised scales of Rs.5500-9000 and Rs.6500-10500.

(b) Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs.5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs.5500-9000 & Rs.6500-10500 during this period.

In the case of both (a) and (b) above, the promotions/financial upgradations granted under ACP to the pre-revised scales of Rs.5500-9000 and Rs.6500-10500 prior to 01.01.2006 will be ignored on account of merger of the pre-revised scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs.4200 in the pay band PB-2. After the implementation of MACPs, two financial upgradations will be granted both in the case of (a) and (b) above to the next higher grade pays of Rs.4600 and Rs.4800 in the pay band PB-2.

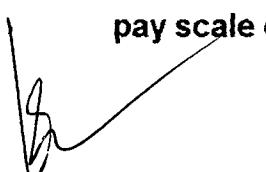
11. The applicability of the above rule in so far as the applicant is concerned has to be considered now. Initially, the applicant joined as Hindi Translator (later on redesignated as Junior Hindi Translator) in the pay scale of Rs 1,400 – 2,300/- which under the Pay Rules 1997 effective from 01-01-1996 underwent an upward revision of Rs 5,000 – 8000/- (Grade S-9). W.e.f. 30-03-2002, the applicant gained the first ACP and her pay was fixed in the scale of Rs 5,500 – 9,000/- which is the next grade in the normal pay scales from S-9 and S-10. Annexure R-5 Office Order dated 11-02-2003 refers. This pay scale of Rs 5,500 – 9,000/- was replaced by Rs 7,450 – 11,500/- vide Annexure A-3 dated 24-11-2008 (as modified by Annexure A-4 dated 27-11-2008.) This pay scale of Rs 7,450 – 11,500/- is replaced by the Revised Pay Scale (PB-2) of Rs 9,300 – 34,800/- with a grade pay of Rs 4,600/-. There is no quarrel upto this stage.

12. When the question of applicability of MACP came, it is the case of the applicant that since the pay scales of Rs 5,000 – 8,000/-, Rs 5,500 – 9,000/-, 6,500

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– 10,500/- have been merged, the financial upgradation granted from Rs 5,000 – 8,000/- to Rs 5,500 – 9,000 in 2003 has to be ignored by virtue of clause No. 5 of the Scheme (extracted above). Thus, the applicant has to be treated to be in the very initial grade without any financial upgradation and thus, she is entitled to two financial upgradations, one as on 01-09-2008 (from the date the MACP became operative) and another on completion of 20 years i.e. 30-03-2010. And since, the grade pay the applicant was drawing was Rs 4,600/-, the first Financial Upgradation should carry Grade pay of Rs 4,800/- while the second one Rs 5,400/-. This is objected to by the respondents as according to them, the higher pay scale claimed by the applicant relates to Hindi Translators of the Central Secretariat Services and not to the subordinate offices in which the applicant is functioning.

13. Now, a close look again at para 5 of the Scheme is essential. The wordings are "Promotions earned/upgradations granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPs." It is pertinent to mention that after the sixth Pay Commission Recommendations, in respect of grant of MACP, it is not the pay scale that undergoes any upward revision but only the Grade Pay, as is evident from para 2 of the scheme itself. Thus, for invoking the provision of Rule 5 of MACP, what is to be seen is as to whether the grant of financial upgradation resulted in a higher grade pay in the upgraded pay scale. The first Schedule vide Rules 3 and 4 (section I, Part A) annexed to the Revised Pay Commission Rules 2008 provides for the the scale, revised pay structure and corresponding grade pay for the erstwhile pay scale of Rs 5000 – 8000 and 5,500 – 9000 as under:-



Present Scale			Revised Pay Structure		
Sl No.	Post/Gr	Present scale	Name of Pay Band/Scale	Corresponding pay Bands/scales	Corresponding Grade Pay
10	S-9	5000 – 150 - 8000	PB-2	9,300 – 34,800/-	4200
11	S-10	5500 – 150 - 9000	PB-2	9,300 – 34,800/-	4200

14. The illustration appended to para 5 would clarify the point. When the scales of pay of Rs 5,000 – 8000 and Rs 5,500 – 9,000/- get merged, the grade pay in these two grades remained the same i.e. Rs 4,200/-. It is only under such a circumstance, (i.e. The two pay scales should have the same grade pay) that the promotion or upgradation should be ignored. In the instant case, admittedly, the financial upgradation resulted in the pay scale of the applicant substituted the earlier Rs 5,000-8000/- Rs 5,500 – 9000 and thus, the Pay Band remained the same, as also the grade pay. Under such circumstances, when there is a merger of the two, into a single pay scale, the earlier upgradation granted under the ACP scheme has to be ignored. . Thus, clause 5 of the scheme does apply to the case of the applicant. Hence, though the applicant had earned one Financial upgradation in 2002, the same has to be ignored. It is at a very late stage i.e. w.e.f. 01-01-2006 that the pay scale of Junior Hindi Translator was revised to Rs 7,450 – 11,500/- and the grade pay attached to the same is Rs 4,600/- as per the aforesaid First Schedule. This is the admitted position, as could be seen from Annexures A-6 Pay fixation as well as the statement annexed thereto, Annexure A-8 proforma (vide entry against para 3(i) and (iv) thereof, Annexure R-6 and para 7 of Annexure MA1. Thus, though the pay scale of Junior Hindi Translator underwent upward revisions (from the initial scale of Rs 4,500 – 7000 to ultimate

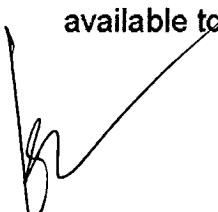
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pay scale of Rs 7,450 – 11,500/-), practically, the applicant remained in the same post without any promotion for twenty years. This makes her eligible to two financial upgradations one on completion of ten years of service or 01-09-2008 whichever is later and the other on completion of 20 years. The upgradation shall be in respect of the grade pay i.e. Rs 4,800/- and Rs 5,400/- respectively. Thus, w.e.f. 01-09-2008 the pay scale of the applicant shall be 9,300 – 34,800 with grade pay of Rs 4,800/- and w.e.f. 30-03-2010 the pay scale and grade pay of the applicant should be Rs 9,300 – 34,800 and Rs. 5,400 respectively. It is the same which has been claimed by the applicant and this is the same which has been observed by the internal audit as well, vide MA 1 (para 7). The claim of the applicant is not based on the pay scale applicable to the Central Secretariat Services but one purely within the ambit and scope of the provisions of the MACP including para 5 of the scheme, which is applicable to the facts and circumstance of this case.

15. In view of the discussion as in the preceding paragraphs the OA succeeds. The impugned order at Annexure A-1 and A-2 are hereby quashed and set aside. Respondents are directed to pass suitable orders, revising the pay of the applicant as hereunder:-

- (a) w.e.f. 01-09-2008: admissible pay in the scale of Rs 9,300 – 34,800 with grade pay of Rs. 4,800/-.
- (b) w.e.f. 30-03-2010: Admissible pay in the scale of Rs 9,300 – 34,800 with grade pay of Rs 5,400/-.

16. Arrears arising from the above fixation of pay shall also be made available to the applicant.

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17. It is made clear that the upgradation in the case of Junior Hindi Translator under MACP is peculiar to this post in view of merger as well as revision of pay scale of Jr.Hindi Translators. Other cases where such a merger coupled with revision of pay scale as in the case of Jr.Hindi Translators does not exist, cannot claim parity with the case of Jr.Hindi Translator.

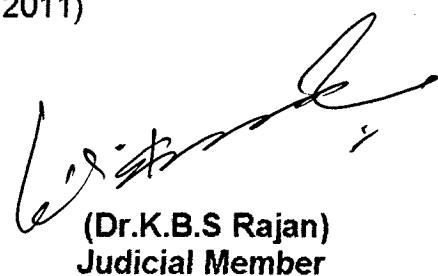
18. This order shall be complied with, within a period of three months from the date of receipt of this order.

19. Under the above circumstances, there shall be no orders as to costs.

(Dated this the day of September, 2011)



(K Noorjehan)
Administrative Member



(Dr.K.B.S Rajan)
Judicial Member

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